

### **REMARKS**

The office action and the references cited and applied therein have been carefully considered together with the present patent application. Claims 1 and 17 have been amended to emphasize pre-existing differences between the invention as claimed and the prior art that has been cited and applied in the most recent rejections.

Claims 1-2, 5-6, 12-14 and 16 have now been rejected under 35 U.S.C. 103(a) as being unpatentable over the Smith application in view of Bhagwat. Neither of these references are believed to teach or suggest these claims for several reasons, and it is respectfully requested that the rejection be withdrawn and the claims allowed.

First of all, it is believed that Smith and Bhagwat are an improper combination for the reason that there is no motivation to combine them supplied by either of the references to combine them with the other. Moreover, the manner in which the examiner has applied the purported teachings of Bhagwat in the combination is **contrary** to the basic structure and functionality of Smith. The only reason for combining these references has to be the result of hindsight reconstruction, using the independent claims of the present application as a roadmap to formulate the rejection. Smith operates in a much different manner than Bhagwat, even if it can be assumed that Bhagwat's motor is the equivalent of an audio unit as set forth in applicants' claims 1 and 17.

Smith's paragraph 0031 describes a much different operation and is set out below, (with text in bold being made for emphasis):

Power supply 40 also provides power to radio circuitry 44. A **switching means 42 may be connected to switch knob 17 to properly select the components receiving power.** For example, the **user can select** if the power supply 40:

(a) provides power to both the radio circuitry 44 and to charger 43 (for charging battery pack 60);

(b) provides power to the radio circuitry 44 from the battery pack 60;

(c) provides no power to any component; etc.

Switching means 42 may comprise relays, transistors or other switching devices as is well known in the art. Preferably power supply 40 can accept power from battery packs having different voltages.

Paragraph 0031 describes the operation of the Smith device which is not believed to be contradicted by any other part of the patent. It clearly discloses and describes a switching means 42 that may be connected to a switch knob 17 to properly **select** the components receiving power. The knob 17 controls the switching means 42 which is described in the next to last sentence of the paragraph that it may comprise relays, transistors or other switching devices as is well known in the art.

The switching means is necessarily a means plus function element and it is defined in that sentence to comprises relays, transistors or other switching devices. However, the switching means performs the **function** that is clearly delineated in three paragraphs (a), (b) and (c). More particularly, the user can **select** if the power supply is to (a) provide power to both the radio circuitry 44 and to charger 43 (for charging battery pack 60), or (b) provides power to the radio circuitry 44 from the battery pack 60, or (c) provides no power to any component; etc.

None of these three alternatives is automatically done. It is stated to be **selected** by the user. There is no description whatsoever that indicates that there is any automatic operation from one option to another based upon a relay coil. Unlike the above described operation, **Bhagwat does not permit an operator to select the components receiving power**. The only “selection” that is permitted is the use of the on/off switch 54. Therefore, the user cannot select providing power to both the radio circuit and charger as opposed to providing power to the radio circuitry from the battery or provide no power to any component. This is simply not possible with the Bhagwat circuit. The only selection that is possible for a user is to use the on/off switch to control any power being supplied to the motor 22. Thus, it is clear from this discussion that Bhagwat cannot be combined with Smith without substantially altering the nature of the operation of Smith or Bhagwat.

There is another reason that it is not obvious to combine Smith and Bhagwat. It should be noted that Bhagwat issued in May of 1989 and that the patent is assigned to Black & Decker. The Smith application was filed in May of 2002 and is also assigned to Black &

Decker. It is submitted that if it were obvious to combine these two patents, it would have been done by Smith since both Smith and Bhagwat presumably work for the same company and Smith presumably had knowledge of the prior development of Bhagwat and still did not attempt to provide any automatic operation in such heavy duty audio equipment.

Smith and Bhagwat also fail to teach or suggest an apparatus as defined in claim 1 which includes “a relay coil connected in circuit between said cord and said audio unit, said coil monitoring the presence of AC power being applied to said audio unit and causing said relay to open circuit and **electrically isolate said audio unit from said battery** when AC power is applied to said audio unit . . .”. If the audio unit is equivalent to Bhagwat’s motor 22, it is clear that Bhagwat fails to teach or suggest “the presence of AC power being applied to said audio unit and causing said relay to open circuit and **electrically isolate said audio unit from said battery**”.

Bhagwat does not electrically isolate the motor from the battery when AC power is present. The battery positive terminal which is the top terminal as shown in Fig. 4 is always connected to the motor through the line connection to switch 54 regardless of the position of the relay, i.e., regardless of whether the movable pole is in the NC or NO position that is controlled by the relay coil K1 that is connected to the input lines 74. Therefore, the battery is not electrically isolated from the audio unit when AC power is applied to the audio unit. This fundamental difference in and of itself compels a conclusion that this claim should be allowed and it is respectfully requested that the rejection be withdrawn and the claim allowed.

Claim 17 has similar distinguishing language “said circuit **completely isolating said audio unit from said battery pack when AC power is applied to said audio unit . . .**” and should also be allowed.

The examiner has rejected claim 9-11, admitting that Smith fails to disclose the feature of the frame structure as claimed in claims 9-11 but that Official Notice is taken that this invention is simply the inventors’ preference and would have been obvious to one of ordinary skill in the art. However, applicants dispute such Official Notice and expressly do not acquiescence in the taking of Official Notice and respectfully request that the examiner provide an affidavit to support the Official Notice taken in the next office action if there is one, as required by 37 CFR 1.104(d)(2) and MPEP § 2144.03.

All of the dependent claims necessarily incorporate the features of the independent claim from which they depend and in addition supply other features and/or functionality that is not found in those claims and therefore for this reason alone it is believed that all dependent claims are in condition for immediate allowance.


Therefore, this response is believed to be a complete response to the Office Action. However, Applicants reserve the right to set forth further arguments supporting the patentability of their claims, including the separate patentability of the dependent claims not explicitly addressed herein, in future papers. Further, for any instances in which the Examiner took Official Notice in the Office Action, Applicants expressly do not acquiesce to the taking of Official Notice, and respectfully request that the Examiner provide an affidavit

to support the Official Notice taken in the next Office Action, as required by 37 CFR 1.104(d)(2) and MPEP § 2144.03.

In addition, because the arguments made above may not be exhaustive, there may be reasons for patentability of any or all pending claims (or other claims) that have not been expressed. For the foregoing reasons, reconsideration and allowance of all pending claims is respectfully requested.

Respectfully submitted,

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